

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOSE INOA,

Plaintiff,

v.

LIEUTENANT TIMOTHY DELANEY, et al.,

Defendants.

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DECISION & ORDER

22-CV-6509FPG

**PRELIMINARY STATEMENT**

On December 23, 2024, *pro se* plaintiff Jose Inoa filed a motion requesting that the Court issue an order to conduct a physical examination of plaintiff, including the extraction of “plaintiff’s skin muscle fat tissue” for purposes of DNA forensic evaluation. (Docket # 86). The Court interprets the motion to seek an independent physical examination of plaintiff pursuant to Rule 35 of the Federal Rules of Civil Procedure.<sup>1</sup>

Rule 35 generally governs requests made by one party to require another party to submit to a medical examination. *See Fed. R. Civ. P. 35(a)*. “Rule 35, however, does not vest the court with authority to appoint an expert to examine a party [even an indigent inmate] wishing an examination of himself.” *See Smith v. Carroll*, 602 F. Supp. 2d 521, 526 (D. Del. 2009). Although Inoa has the right to hire his own expert, “no civil litigant, even an indigent one, has the legal right to [a medical examination at taxpayer expense].” *Id.*; *accord Brown v. United States*, 74 F. App’x 611, 614 (7th Cir. 2003) (court properly denied indigent inmate’s

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<sup>1</sup> In his motion, plaintiff cites Section 3121 of the New York Civil Practice Law and Rules. (*See* Docket # 86). Rule 35 of the Federal Rules of Civil Procedure is the federal counterpart to that state law provision.

request to compel government to bear cost of hiring expert to testify on his behalf), *cert. denied*, 540 U.S. 1132 (2004). Accordingly, Inoa's motion for a Court-ordered medical examination of himself (**Docket # 86**) is **DENIED**.

**IT IS SO ORDERED.**

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*s/Marian W. Payson*

MARIAN W. PAYSON  
United States Magistrate Judge

Dated: Rochester, New York  
December 26, 2024